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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE 301st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-19167 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Second periodic report of Cyprus (CAT/C/33/Add.1; HRI/CORE/1/Add.28)

1. At the invitation of the Chairman, Mr. Eftychiov, Mrs. Koursoumba, Mr. Anastasiades, Mr. Christophides and Mr. Kestoras (Cyprus) took places at the Committee table.

2. Mr. EFTYCHIOY (Cyprus) said that the promotion and protection of human rights was a matter of the highest priority for the Government of a country whose people had contributed so much in ancient times to the development of modern democratic principles. The European Convention on Human Rights and the First Protocol thereto had served as prototypes for the relevant provisions of the Constitution of Cyprus, part II of which contained an extensive bill of rights. Cyprus had ratified all international human rights instruments for which monitoring bodies had been established. Such instruments had superior force to domestic law.

3. In connection with article 2, paragraph 1, of the Convention, he wished to stress that the second periodic report (CAT/C/33/Add.1) pertained only to the territory of the Republic under the effective control of the Government of Cyprus. Since 1974, 37 per cent of the territory of Cyprus had been under Turkish military occupation and the Government was therefore unable to enforce the provisions of the Convention in the entire territory under its jurisdiction.

4. Mrs. KOURSOUMBA (Cyprus) said she wished to report on developments during the period since the date of submission of the report. Law 77(1)/97, the Psychiatric Treatment Law, which had been enacted and had replaced the Mental Patients Law, adopted an entirely new approach to mental illness, assuming that mental disorders, with only a few exceptions, were curable.

5. Patients were treated in public and private centres on a voluntary or compulsory basis. Treatment was compulsory where an element of danger existed and was of fixed duration, with a procedure for determining whether it should be continued or terminated.

6. A Supervisory Committee had been established to oversee implementation of the Law and propose amendments where necessary, to make recommendations regarding the suitability of treatment centres, to inspect treatment and recuperation centres, to provide counselling on the Law and on patients' rights, to examine complaints regarding detention and treatment and to submit its findings and recommendations to the Minister, including recommendations regarding the cancellation of licences to operate treatment centres.

7. Where patients were unable to express their will freely, guardians were appointed. When a person suffering from a mental disorder was convicted in a criminal case, the court was empowered to issue a hospital order in lieu of other punishment. A patient's consent was required for any operative

treatment. Patients were free to communicate with persons outside the centre and had the right of access to its records unless adverse effects for themselves or for others might ensue.

8. The new Law was applied in the cases referred to in paragraph 5, subparagraphs (a) and (d), of the report. With regard to paragraph 5, subparagraphs (b) and (c), it was expected that a bill to amend section 70 of the Criminal Procedure Law (cap. 155) would be passed within a matter of days. Under the new version of section 70, if a court concluded that an accused person was incapable of following the proceedings owing to a mental disorder, it could order detention in a State psychiatric centre for a period of time analogous to that provided by Law 77 (1) of 1997 or placement in psychiatric care until the patient had sufficiently recovered to follow the proceedings.

9. Where a person was acquitted on the grounds of a mental disorder, the court was required to order detention in a State psychiatric centre for treatment. The original provisional order for compulsory confinement, mentioned in paragraph 7 of the report, was for two months and not three weeks.

10. With reference to paragraph 9 of the report, provision had been made in the 1998 budget for the establishment of a group hostel. In addition, day-care centres were operating in Nicosia, Limassol and Larnaca.

11. The Government's mental-health policy focused on shifting therapeutic services from the mental hospital to general hospitals and the community, providing comprehensive community-based services in all districts and improving living conditions for the inmates of the mental hospital. Admissions to the mental hospital had been reduced by almost two thirds between 1986 and 1996. Local mental-health facilities were being gradually expanded to meet the needs of local communities.

12. Under the 1996 Administration of the Property of Incapacitated Persons Law, mental patients were treated no differently from persons suffering from physical disorders which rendered them incapable of regulating their own affairs.

13. Following the consideration of the second periodic report of Cyprus to the Human Rights Committee in 1994 (CCPR/C/32/Add.18), a bill relating to the interpretation and implementation of international treaties and other related issues had been drafted. The matter was still under examination by the Government because the prospective establishment of a national institution for the promotion and protection of human rights would necessitate amendments to the bill to deal with the overlapping powers of the proposed institution and the council envisaged by the bill.

14. The human rights institution would provide information, assist in forming public opinion and advise the Government on human rights issues. It would review relevant legislation, case law and administrative arrangements and report to the competent authorities, make recommendations for harmonization of the legislation with international human rights treaties and liaise with similar institutions abroad. It would also examine complaints of human rights violations.

15. In the meantime, the problem of implementation of treaties was dealt with by including in any ratification law provisions whereby the self-executing provisions were declared to have that status and the non-self-executing provisions were supplemented by substantive provisions, for example by describing the penalty to be imposed for an offence under the treaty or including a provision conferring power to make regulations.

16. The new Prisons Law, No. 62(1)/96, had been amended by Law 12(1)/97 and general regulations for its implementation had been adopted.

17. The Commission of Inquiry on complaints of police ill-treatment of persons held in custody had highlighted the rigidity of the outdated Cypriot law of evidence. In some instances of unacceptable ill-treatment of individuals, the accused police officers had been acquitted because of the lack of admissible evidence to justify conviction under the old law. A bill recently submitted to the House of Representatives was designed to change the evidential system from the common-law approach to the Continental one so that all relevant evidence would be admissible subject to certain exclusionary provisions.

18. Although the bill was highly controversial, it was strongly supported by the Attorney-General. If it was passed, he would no longer be hindered from instituting criminal proceedings against persons accused of ill-treatment by the knowledge that relevant evidence would not be admissible in court. A second bill drafted by the Law Commissioner would be promoted if passage of the former bill was likely to be delayed. It would provide for the admissibility of statements as evidence if they were taken by an electronic recording system with all necessary safeguards. Video cassettes could be adduced as evidence-in-chief and for purposes of cross-examination.

19. The Commissioner for Administration (Ombudsman), had dealt with a number of complaints concerning ill-treatment. In 1994, one complaint had been found valid and the Attorney-General had authorized a private prosecution. In 1995, disciplinary proceedings instituted by the Chief of Police in the case of Charalambos Constantinou had been discontinued when the complainant had refused to give evidence before the Disciplinary Board. In the case of Salih Askeroglou, the complainant had been awarded compensation and legal costs in the light of the findings of a criminal investigator appointed by the Council of Ministers.

20. In the case of Erkan Egmez, the complainant refused to give evidence regarding his alleged ill-treatment and had filed an application to the European Commission of Human Rights. In response, the Government had submitted that Mr. Egmez had failed to exhaust domestic remedies because the Attorney-General was unable to prosecute without his evidence and because he had failed to bring a civil action for damages.

21. In 1996, the Commissioner for Administration had referred two cases to the Attorney-General. One was still under consideration and the other had been rejected because of the lack of sufficient evidence to justify prosecution. The Commissioner was preparing a report on a valid complaint filed in 1997.

22. Under a proposed amendment to the Commissioner for Administration Law, the Attorney-General would be empowered to order a prosecution on the basis of the Commissioner's report alleging that a criminal offence had been committed. If the amendment was passed, cases such as that of Erkan Egmez could be brought before the Criminal Court.

23. Law 51(1)/97 gave effect to the provisions of the European Convention on the Compensation of Victims of Violent Crimes.

24. The death penalty no longer existed de facto in Cyprus. A bill under consideration would expressly abolish that penalty and redefine the offences for which it had previously been imposed. The Attorney-General had recently proposed that Cyprus should ratify Protocol 6 to the European Convention on Human Rights.

25. Mr. BURNS (Country Rapporteur) complimented the Government of Cyprus on its reports that had effectively pre-empted almost every issue he had intended to raise. Cyprus had ratified virtually all the international human rights treaties, including their optional provisions, and, in the case of the Convention, had made the declarations under articles 21 and 22 and had not entered a reservation to article 20. It had also established domestic institutions to implement its international obligations.

26. He much appreciated the fact that some questions pending since the initial report had been addressed, in particular with regard to the law concerning the self-executing and non-self-executing provisions of treaties. While welcoming the adoption by Cyprus of the Convention's definition of torture and its incorporation into domestic law, he wondered whether there were still any provisions of the Convention which Cyprus would regard as non-self-executing.

27. Turning to the issue of police misconduct, he said that the second periodic report dealt extensively with the progress made, particularly through the work and recommendations of the Commission of Public Inquiry. Specific disciplinary action, including criminal prosecution and dismissal, was a clear indication of the Government's commitment. In addition, the Commissioner for Administration was clearly playing a vital role in the enforcement of human rights values in Cyprus.

28. It was commendable that Cyprus had implemented the recommendations of the European Committee for the Prevention of Torture (CPT) concerning the appropriate documentation of detainees, and was considering the use of electronic recordings as admissible evidence. Such simple and cost-effective measures would protect both the individuals held in custody and the police officers holding them.

29. He appreciated the oral clarification of the "certain legal peculiarities" in the case of Mr. Erkan Egmez, to which reference was made in paragraph 43 of the report.

30. There was also, however, the case of Mr. Neeip Saricicekli who asserted that he had been violently arrested and tortured. Given the strong medical evidence, there appeared to be grounds for investigating the matter and he

would like to know whether the accused had been tried on the substantive charge of espionage and the outcome of any such trial, whether the claims of police brutality had been investigated, and what the current status of that case was. He also asked whether the alleged use of electric stun guns in the Limassol police station had been investigated.

31. In conclusion, he complimented Cyprus on the way in which its domestic law was formally structured and applied and on submitting its periodic report within six weeks of the due date, a record achievement.

32. Mr. SORENSEN (Alternate Country Rapporteur), having thanked the delegation of Cyprus for its oral presentation which had greatly facilitated his task, said that he was pleased that the bill to modernize the Mental Patients Law had been passed. Nevertheless, there remained some doubt as to the meaning of a person's confinement "for his own protection" and "protection of the public" as mentioned in paragraph 5, subparagraph (a), of the second periodic report.

33. He also had some questions about the practical aspects of the new Law, such as which persons were qualified to bring a mental patient before the courts, and at what stage psychiatrists became involved in the process. He asked whether the time limit for compulsory confinement would always be two months and whether the patients, or their custodians, had any say in decisions regarding fitness for release from compulsory confinement.

34. Since mental patients were among the most vulnerable members of society, the level of treatment provided to them was highly indicative of the authorities' attitude to social welfare. He congratulated the Government and delegation of Cyprus on their reports which contained some very good elements, including high-quality statistics, and could serve as a model for many countries. He was interested in the composition of the Supervising Committee that had been mentioned in the oral statement and wondered whether non-governmental organizations (NGOs) had any influence on that Committee and whether the patients were represented in it. More generally, he would like to know who selected its members.

35. He did not agree that there was any medical justification for isolating detainees solely on the grounds of HIV or hepatitis B infection. Paragraph 13 of the report alluded to separate and improved conditions for such inmates, but even positive discrimination was still discrimination. Since he firmly believed that the spread of sexually transmitted diseases could be tackled effectively without resorting to isolation he would like to hear the delegation's comments on the view that infected prisoners should be regarded as normal people.

36. In connection with article 3 of the Convention, the Committee had been informed as recently as May 1997 of an individual being returned to Turkey, after being denied consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR), despite the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country.

37. He welcomed the information that an expert in forensic medicine was to be trained. However, article 10 of the Convention also provided for the education and information of medical personnel regarding on the prohibition of torture and he wondered whether there was any such training in Cyprus.

38. As far as the systematic review of prisons was concerned, Cyprus appeared to be complying with that aspect of article 11 of the Convention, but he would like to know whether the police, interrogation rules and instructions were also subject to systematic national review.

39. In connection with article 14, he asked whether victims of torture were entitled to compensation from the State in the event that the victim was unable to identify the specific perpetrator of the violation. He also asked whether Cyprus provided medical rehabilitation for victims of torture, and whether, in severe cases of torture, they had access to specialized treatment abroad, such as was available at the Athens rehabilitation centre.

40. He drew the attention of the Cyprus delegation to the United Nations Voluntary Fund for Victims of Torture, which was in dire need of funding, and urged the Government of Cyprus to make a contribution to that Fund, if it had not already done so.

41. Mr. ZUPANCIC, referring to the proposed change in the Cypriot law of evidence from the common-law system to the Continental one, said he was concerned about the constitutional preservation of the exemption from self-incrimination privilege, in connection with article 15 of the Convention which proscribed the use of evidence obtained through torture. In addition, he wondered how the change from the one system to the other would be carried out in view of the fact that most Continental countries did not have a separate branch of evidential law. In that connection, he would like to know whether there had been any cases, especially any brought before the Supreme Court, concerning the link between the privilege of exemption from self-incrimination and the rejection of evidence extracted by torture.

42. Mr. REGMI said that the second periodic report of Cyprus had not adhered strictly to the guidelines prescribed by the Committee. In particular, very little information had been provided under article 2, paragraph 1, of the Convention. He hoped that the next periodic report of Cyprus would deal with the implementation of the Convention on an article-by-article basis.

43. The information in paragraph 28 of the report on the conclusions of the Commission of the Public Inquiry concerning complaints of ill-treatment by the police did not appear to give a clear and complete account of the incidence of torture. He would like to have specific information on the number of victims of torture who had received full compensation and redress since the submission of the initial report and what the maximum amount of compensation payable to victims of torture was. Moreover, it was unclear whether the Government of Cyprus had concluded any treaties or agreements with other States parties to the Convention to cooperate in criminal proceedings relating to acts of torture.

44. He also wished to know whether detainees had the right to inform their relatives immediately of their fate, to choose counsel during the preliminary

interrogation proceedings and to choose their own doctors. Did the new mental-health Law contain provisions for the issuing of a certificate of mental and physical fitness before an interrogation began? What was the maximum period of pre-trial detention allowed, and did the legal system in Cyprus include provisions governing solitary confinement and incommunicado detention?

45. In connection with article 11, he asked what arrangements were made by the State to prevent persons in custody from being tortured during preliminary proceedings; what authority was competent to monitor the treatment of persons in custody and ensure prompt and impartial dispensation of justice; and by whom that authority was appointed. If the accused believed that he had been denied his rights, could he appeal to a higher authority?

46. Mr. CAMARA asked what the "legal impediments" were that had prevented the Assize Court of Larnaca from admitting as evidence the videotape referred to in paragraph 30 of the report. The existence of such impediments might well be in conflict with the provisions of article 2, paragraph 2, of the Convention. He would also like to know what the "legal peculiarities" of the case referred to in paragraph 43 of the report were, and whether there was a risk that the complaint might be shelved, in violation of the Convention.

47. The CHAIRMAN asked the Cypriot delegation to describe its country's judicial system. Was one single Attorney-General responsible for the entire territory? As an independent official, how did he reconcile his functions with those of the ombudsman, if such an official existed? Was there any overlapping of their functions, or did each work within a clearly defined framework?

48. He thanked the delegation of Cyprus for its oral presentation and invited it to provide answers, at the Committee's 302nd meeting, to the questions that had been asked.

49. Mr. EFTYCHIOY (Cyprus) said that his delegation would do its best to comply with the Chairman's request.

50. The delegation of Cyprus withdrew.

The meeting was suspended at 11.40 a.m. and resumed at 12 noon.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1997/WG.11/CRP.4)

51. Mr. SORENSEN said that, on 17 and 18 October 1997, he had attended the meeting of the pre-sessional open-ended working group on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in his capacity as representative of the Committee against Torture. The object of the exercise was to create an inspection mechanism similar to that established by the European Committee for the Prevention of Torture (CPT). At the most recent

meeting, substantial progress had been made with the second reading of the draft articles, with agreement reached on all articles other than the crucial articles 1, 8 and 12.

52. Article 1 posed the problem of the right to make a visit, with the representatives of some countries expressing the view that the subcommittee to be established under article 2 should organize missions to States only on invitation, while others maintained that in that case there would be no point in preparing a protocol, the purpose of which was to enable missions to be conducted without invitation.

53. Discussions on the subcommittee's mandate were in their sixth year. There was currently almost unanimous support for the view that, to be effective, the subcommittee must have a mandate enabling it to conduct inspections without invitation; have unlimited access, without prior notification and in privacy, to all persons including detainees, and to all premises and relevant documents; and return to locations already visited if it so desired. Over the years, the number of States resisting that mandate had fallen to about three, and the view was emerging that, while consensus was desirable, there had to be some limit to the concessions made if the subcommittee was to be of any value.

54. At an early stage in the drafting process, some participants had felt that the Committee against Torture should itself conduct the missions. Over the years, the Committee's role in the draft optional protocol had dwindled, the only surviving reference thereto being in article 10, paragraph 1, which empowered the subcommittee to decide to postpone a mission to a State party if that State had agreed to a scheduled visit to its territory by the Committee against Torture pursuant to article 20, paragraph 3, of the Convention.

55. In his own view, the Committee and the proposed subcommittee had nothing in common other than the shared goal of eradicating torture; and he welcomed the fact that member States had come to recognize that bringing the two bodies together could jeopardize the functioning of both.

56. He highlighted some features of the draft articles finalized on second reading. Article 2 provided for the establishment of a subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture to carry out the functions laid down in the Protocol. Article 3 stressed the importance of cooperation between the State party and the subcommittee, which was to be guided by the principles of confidentiality, impartiality, universality and objectivity.

57. Article 4, paragraph 1, provided that the subcommittee was to consist of 10 members, increasing to 25 after the fiftieth accession to the Protocol. It thus differed from the CPT, which consisted of one member per Council of Europe member State, and thus currently had 40 members. Paragraph 2 provided that the subcommittee's members were to be persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty. They were to serve in their individual capacity, be independent and impartial, and available to serve the subcommittee

effectively. That final stipulation was important; for he could personally vouch for the heavy demands such appointments placed on members' time, having had to resign his professorship of surgery in order to discharge his duties as a member of the Committee against Torture and of the CPT.

58. Article 5 permitted each State party to nominate up to two candidates, and article 6 provided for their election by secret ballot by the States parties. In the election of the members, primary consideration was to be given to the fulfilment of the requirements and criteria of article 4.

59. Article 6 differed from the CPT mechanism in requiring due consideration to be given to a proper balance among the various fields of competence, as well as to equitable geographical distribution of membership and representation of different forms of civilization and legal systems of the States parties. Consideration must also be given to balanced representation of women and men.

60. Under article 8, members were to be elected for a term of four years; and under article 9, the subcommittee was to meet in camera - another respect in which it differed from the Committee.

61. There had been protracted discussion of article 11, concerning the role of experts in the subcommittee - an issue that had proved a sticking point over the years. There was agreement that missions should be carried out by at least one member of the subcommittee. Nevertheless, in view of the many different categories of premises to be visited, the composition of missions needed to be strengthened through recourse to experts. One country had consistently opposed their inclusion in missions, instead favouring recourse to advisers.

62. Article 11, paragraphs 2 and 3, provided that, in deciding on the composition of the mission, the subcommittee must take into account the particular objectives of the mission; and that it must consult the State party concerned confidentially, in particular regarding the composition and size of the mission other than with regard to the participating members of the subcommittee. It had finally been agreed that the consultation process should be confidential as, if experts risked public rejection by the State party, many would be deterred from volunteering their services. Likewise, on his own proposal, it had been agreed that no reason should be given in the event of an expert's rejection. The original proposal that interpreters should not be citizens of the State visited had, however, been abandoned as impractical.

63. Article 12 provided, inter alia, that, in selecting experts for a mission, the subcommittee must give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

64. Lastly, article 13 provided - perhaps optimistically, in view of the high cost of interpretation services - that the expenditure incurred by the

implementation of the Protocol, including missions, was to be borne by the United Nations. That problem needed to be taken into account when selecting the composition of a mission.

65. Mrs. ILIOPOULOS-STRANGAS asked whether a copy of the draft optional protocol could be circulated to the members of the Committee.

66. Mr. GONZALEZ POBLETE said that the attitude of some countries regarding prior consent to visits by missions was totally incompatible with the optional character of the instrument in question. Any country freely ratifying the optional protocol tacitly agreed to accept visits at any time. Countries not willing to accept visits without invitation were free not to ratify the Protocol.

67. Mr. SORENSEN said he fully agreed with that comment, as undoubtedly would the vast majority of the States that had participated in the negotiations over the past eight years.

68. Replying to the question by Mrs. Iliopoulos-Strangas, he said that the draft articles finalized at second reading would be circulated to the members of the Committee as soon as they had been officially adopted by the participants in the working group. Lastly, he said that, subject to his being re-elected as a member, he would be very pleased to continue to represent the Committee in future negotiations concerning the draft optional protocol, if its members so wished.

69. The CHAIRMAN thanked Mr. Sorensen for both his presentation and his offer, and said that all the members of the Committee would no doubt support his candidature.

The meeting rose at 12.30 p.m.

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COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 302nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 November 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Cyprus (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.302/Add.1.

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GE.97-19183 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Cyprus (CAT/C/33/Add.1; HRI/CORE/1/Add.28) (continued)

1. At the invitation of the Chairman, Mr. Eftychiou, Mrs. Koursoumba, Mr. Anastasiades, Mr. Christophides and Mr. Kestoras (Cyprus) took places at the Committee table.

2. The CHAIRMAN invited the delegation of Cyprus to reply to the questions asked by members of the Committee at the previous meeting.

3. Mrs. KOURSOUMBA (Cyprus) began by replying to the questions asked by the Country Rapporteur, Mr. Burns. On the question of whether there were still any provisions of the Convention which were non-self-executing, she said that under the Constitution of Cyprus any ratified treaty was automatically incorporated into domestic law. Any act of torture would thus automatically be an offence.

4. With regard to the case of Mr. Saricicekli, the Special Rapporteur on questions related to torture had also taken an interest in that case, and the Government of Cyprus had recently addressed a reply to the Commission on Human Rights, a copy of which would be transmitted to the Committee. Without going into the details of the case, she said that the person concerned had been caught in the act of espionage and had violently resisted attempts to arrest him. Reasonable force had eventually been used. Mr. Saricicekli had been examined by several doctors, none of whom had found any evidence of violence.

5. With regard to the situation in the Limassol police station, she acknowledged that there had been allegations of torture there in the past. A special Commission of Public Inquiry had been set up and, on completion of the inquiry, penalties had been imposed on three senior police officers, including the officer responsible for interrogations and his deputy. The three officers concerned had been dismissed. Since then, no complaint alleging police brutality had been made. As for electric stun guns, they were no longer used.

6. With regard to mental health, paragraph 5, subparagraphs (a) and (d), of the second periodic report would no longer be applicable with the entry into force of the new draft law providing for and regulating voluntary and compulsory treatment of mental patients. Details of those two modes of confinement were given in paragraphs 7 et seq. of the report. Persons suffering from mental disorders were entitled to a court hearing; if they were incapable of attending in person, they could be represented by a lawyer of their choice, whose fees would be borne by the State. Specific provisions governed the circumstances in which voluntary confinement could be changed to compulsory confinement. She would transmit an English translation of those provisions to the Committee. The Supervising Committee responsible for monitoring application of the law consisted of a chairman and eight members appointed by the Council of Ministers, including two lawyers (one in private practice and the other working for the Office of the Attorney-General),

two psychiatrists (one self-employed and one working for the Ministry of Health), a psychologist, a nurse, a social worker and a representative of voluntary mental health associations.

7. As for detainees infected with HIV or hepatitis B, there was no official policy of isolating them; such detainees attended all training, recreational and educational programmes along with the other detainees, but slept in separate cells, for their own protection. That was because, in spite of an information campaign conducted for the benefit of prisoners and warders, the other detainees were unwilling to share accommodation with persons they regarded as ill. With regard to article 3 of the Convention, she said that Cyprus had no refugee problem. Mr. Sørensen had referred to a specific case with which she was not familiar. She would arrange for any written information she was able to obtain on the case to be transmitted to the Committee. There were four official forensic doctors, and if necessary the Government called on the services of experts from abroad, in particular the United Kingdom. To the best of her delegation's knowledge, no education programmes on the prohibition of torture were provided for medical personnel, but given that any conduct tantamount to torture was a breach of medical ethics, it was inconceivable that a doctor or nurse could act in violation of the Convention's provisions. In any case, any conduct of that type would result in prosecution.

8. With regard to the review of interrogation methods, the Police Academy organized lectures on human rights in general, and specifically on interrogation methods, for police cadets. Courses were also held abroad; those attending were required to share what they had learned with their colleagues on their return.

9. It had been asked what steps had been taken to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the establishment of a special form to be completed whenever an individual was arrested by the police and held in a police detention centre. That recommendation had been implemented and was regularly monitored by inspectors. If the form was not filled in, those responsible could be charged with negligence.

10. With regard to compensation under article 14 of the Convention, it was not possible to bring charges against a policeman responsible for ill-treatment if he could not be identified by the victim. However, the victim could bring a civil action and would be entitled to damages, with no upper limit and for an amount fixed by the court. There were three categories: special damages, general damages and punitive damages. She confirmed that medical rehabilitation was provided, both in Cyprus and abroad. If the necessary treatment could not be provided in Cyprus, the Government would bear the cost of treatment abroad, particularly in cases of severe ill-treatment. Such a situation had already arisen. With regard to contributions to the United Nations Voluntary Fund for Victims of Torture, Cyprus had already contributed twice to the Fund, and was preparing to make a third contribution.

11. Replying to the questions asked by Mr. Zupančič about the effects of the proposed legislation covering interrogation and the admissibility of evidence, she said that what was proposed was a comprehensive revision of the law of evidence. The question of a confession obtained in violation of the Convention's provisions had always been a matter of substance and not merely one of procedure. Confessions obtained in that way had never been admissible, and any statement had to be freely made, which meant that pressure of any sort, including promises, was also forbidden. The Government and the Attorney-General fully supported the draft law. However, defence lawyers thought that the draft law would make it easier to reach a guilty verdict, an opinion she herself did not share. The jury system did not exist in Cyprus, and only judges passed verdicts. While torture was not practised in Cyprus, there were undeniably some cases of violations of human rights, for instance, illegal telephone tapping. In one case the court, invoking the freedom of communication guaranteed by the Constitution, had found evidence obtained by intercepting telephone communications inadmissible.

12. On the question of the right of a detainee to choose a doctor and counsel, she said that following two visits to Cyprus by the European Committee for the Prevention of Torture (CPT), that provision was fully respected.

13. Referring to the Lykourgos Vassiliou case, mentioned in paragraph 30 of the second periodic report, she gave details of the nature of the "legal impediments" that had prevented a videotape showing the complainant being ill-treated by the police from being admitted as evidence by the court. The reason had been that the person who had made the video recording had refused to acknowledge that he had been the author of the tape. There had also been a "legal impediment" in the case of Erkan Eğmez, who had filed a complaint against the police with the Ombudsman. A meeting between the two had been arranged in an area under United Nations control, since in order to initiate proceedings the Attorney-General had to be in possession of a statement by the complainant, obtained in circumstances guaranteeing the regularity of the procedure. However, the complainant had failed to keep the appointment.

14. In reply to a question by the Chairman, she said that the post of Attorney-General was guaranteed absolute independence by the Constitution, according to which he was the Government's legal adviser. He could not be removed except on grounds of insanity. He had an Office staffed by advisers and prosecutors, who acted in his name. In matters of prosecution, the Attorney-General had the absolute power to initiate or end proceedings. He also had discretionary power, and the current incumbent had several times made it known that he would not tolerate police brutality and would release anyone who had been subjected to it. As to the judicial system in general, the Constitution provided for a Supreme Constitutional Court and a Supreme Court. Since the entry into force of an Act in 1964, those Courts had been amalgamated into a single Supreme Court, which served as a constitutional court and a court of appeal in criminal and civil matters. The lower courts were broadly speaking divided into civil and criminal courts. Fuller information on matters of jurisdiction was to be found in paragraph 21 of the initial report (CAT/C/16/Add.2) and in paragraph 25 of the second periodic report, currently before the Committee. Article 12 of the Constitution provided for the presumption of innocence of any suspect until proved guilty.

15. A draft law to abolish the death penalty for acts of treason and piracy should soon be adopted by Parliament. She would arrange for the texts of the provisions she had cited during her statement to be transmitted to the Committee, together with all the information and replies she had not yet been able to provide.

The meeting was suspended at 3.55 p.m. and resumed at 4.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Cyprus (continued) (CAT/C/33/Add.1; HRI/CORE/1/Add.28)

Conclusions and recommendations of the Committee

16. At the invitation of the Chairman, Mr. Eftychiou, Mrs. Koursoumba, Mr. Anastasiades, Mr. Christophides and Mr. Kestoras (Cyprus) took places at the Committee table.

17. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Cyprus.

18. Mr. BURNS (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of Cyprus (CAT/C/33/Add.1) at its 301st and 302nd meetings, on 11 November 1997 (CAT/C/SR.301 and 302) and adopted the following conclusions and recommendations:

A. Introduction

The second periodic report of Cyprus was received in timely fashion and it complied with the General Guidelines for periodic reports (CAT/C/14) adopted by the Committee.

The oral presentation by the delegation complemented the written report, informing the Committee of the most recent developments in Cyprus. The ensuing discussion was open and fruitful.

B. Positive aspects

The Committee endorses the conclusions it found in this respect at the time of its consideration of the initial report and welcomes the legislative initiatives concerning mental health, the proposed creation of a National Institution for the Promotion and Protection of Human Rights and reform of the law of evidence.

As well, the Committee acknowledges the activities of the Ombudsman and the response of the Council of Ministers to established cases of police violence.

The Committee especially welcomes the way in which the Convention has been incorporated into the domestic law of Cyprus, particularly the Convention definition of 'torture' itself.

C. Factors and difficulties impeding the application of the provisions of the Convention

As stated in the Committee's Views on the initial report, there appears to be no structural impediment to the implementation of the Convention in Cyprus.

D. Subjects of concern

A few cases of casual violence by police officers continue to be reported, emphasizing the continuous need for programmes of education and vigorous legal response to such instances.

The fact that a victim is unable or unwilling to give evidence should not be a reason for non-prosecution where the case can otherwise be made.

E. Recommendations

The legal and administrative constructs in Cyprus are excellent; in implementing them the Committee advocates a strong programme of re-education directed to field law enforcement personnel that emphasizes the policy of the Government to honour its commitment to human rights."

19. Mr. EFTYCHIOY (Cyprus) thanked the Committee and expressed his delegation's appreciation of a partnership in which both worked to achieve the shared objectives of protection of human rights and respect for the dignity of all individuals, in Cyprus and throughout the world.

20. The CHAIRMAN thanked the delegation of Cyprus for its cooperation.

21. The delegation of Cyprus withdrew.

The public part of the meeting rose at 4.40 p.m.

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Nineteenth session

SUMMARY RECORD OF THE 303rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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GE.97-19200 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Argentina (CAT/C/34/Add.5, HRI/CORE/1/Add.74, CAT/C/17/Add.2)

1. At the invitation of the Chairman, Mr. Benitez, Mrs. Von Beckh and Mr. Chelia (Argentina) took places at the Committee table.

2. Mr. BENITEZ (Argentina) reiterated his Government's appeal to the international community to ensure that the system of protection of fundamental rights and obligations undertaken at the national, regional and international levels had full effect. It was of paramount importance that the Convention be applied strictly, not only for the benefit of the victims of cruel, inhuman or degrading treatment, such as torture, but also to prevent and eradicate such practices.

3. The three branches of power in Argentina had attained their objectives by virtue of the instruments and responsibilities granted them by the country's legal order. Active sponsorship of and participation in the preparation of the various human rights conventions and, the work being done by The Under-Secretaries for Human and Social Rights in the Ministries of Foreign Affairs and the Interior, and by the Government Procurator for the Prison System, within the Ministry of Justice, affirmed his country's vigilance in the area.

4. Since the 1994 Constitutional reform, the international human rights treaties had enjoyed constitutional rank and were under the ongoing scrutiny of a specific commission established to ensure their precedence and to spearhead the legislative changes necessary to give full force and effect to the recognized rights.

5. Extraditions of suspected war criminals had been granted under article 144 (3) of the Argentine Penal Code, which recognized the offence of torture as extraditable and provided for the trial of its perpetrators and compensation for its victims and their families. He took the opportunity to inform the Committee of later developments concerning some of the cases mentioned in the third periodic report.

6. His Government fully realized that prisons constituted a high-risk environment for the commission of the offences of torture and ill-treatment. That fact had been the subject of exhaustive investigations, within the law-enforcement bodies and prison system in general, which had led to drastic changes. He did not wish to imply, however, that the provincial and federal police were necessarily or generally implicated in such acts, but simply that the potential risk had to be recognized if the changes needed to guarantee the protection of the human rights of detainees effectively were to be promptly made. The Government Procurator for the Prison System had worked successfully in the three years since his post had been established.

7. There had been two significant legislative developments, namely, the adoption of Act No. 24,660 governing the deprivation of freedom, and Decree No. 330/96 providing a general regulation for the treatment of persons under trial. Both instruments were deeply rooted in the concept of humanitarianism, fully respecting the rights and guarantees flowing from the Constitution and the international treaties ratified by Argentina.

8. Without prejudice to the legislative progress on the subject, the Government Procurator for the Prison System had identified cases of ill-treatment and had reported them to the courts. A number of specialized study programmes and workshops had targeted officials of the federal prison system, and the police forces and members of the judiciary in order to familiarize them with the international legal instruments and concepts governing the treatment of inmates.

9. Several provisions of the Convention were devoted to the characterization of torture as an extraditable offence and, in full recognition of that principle, the Argentine legislature had adopted Act No. 224,767 on international cooperation in criminal matters on the basis of reciprocity and guarantee of due process, and subject to certain conditions.

10. His Government was fully aware that much remained to be done to eradicate the offence of torture, but it pledged its unreserved commitment to work steadily toward that goal.

11. Mr. GONZALEZ POBLETE (Country Rapporteur) said that, when ratifying the Convention on 24 September 1986, Argentina had made the declarations under articles 21 and 22, and had entered no reservations.

12. With regard to article 2 of the Convention, the third periodic report of Argentina quoted an extract from article 75, paragraph 22, of the new Constitution which conferred constitutional rank on various human rights instruments, including the Convention. That new provision had categorically dispelled the doubts expressed by the Committee when it had considered the previous report of Argentina. At that time, it had been concerned by the fact that, in certain rulings, the Supreme Court of Argentina had not recognized the primacy of international conventions over the provisions of domestic law.

13. The report omitted to state that Argentina had been one of the first members of the Organization of American States (OAS) to ratify the Inter-American Convention on Forced Disappearance of Persons, merely saying, modestly, that Argentina had contributed to its adoption. There was no doubt that the Inter-American Convention strengthened the protection against torture. The ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, in 1996, was yet another indication that Argentina's implementation of article 2 of the Convention against Torture was fully satisfactory.

14. The extraditions granted by Argentina had been effected in a manner consistent with the provisions of article 3 of the Convention. Nevertheless, the extradition treaties entered into with other States were applicable only

for the purposes of criminal prosecution. He wondered therefore what the policy of Argentina was with respect to the return (refoulement) of persons, as covered in article 3.

15. With respect to article 4, paragraph 15 of the report stated that, although there had been no changes in the substantive provisions of the Penal Code during the period covered by the report, accusations of torture, ill-treatment and unlawful coercion had had a better reception. Cases were cited in which allegations of torture had led to convictions. The penalties provided for acts of torture in article 144 (3)of the Penal Code were cited in detail in the initial report of Argentina (CAT/C/5/Add.12/Rev.1), and ranged from eight years' to life imprisonment, depending on the circumstances.

16. The sentence imposed in the Sergio Santiago Durán case referred to in paragraph 74 of the report, was consistent with those provisions. However, in the Miguel Rodríguez case (para. 73) and the Rodríguez Laguens case (para. 79), the judge had failed to impose the life sentence prescribed for acts of torture resulting in death, opting instead for the minimum sentence applicable in cases of murder.

17. Despite the severity of the sentences laid down for acts of torture, the judges thus failed to apply those provisions. According to information provided by non-governmental organizations (NGOs), since the entry into force of Act No. 23,097, only five life sentences had been imposed for acts of torture resulting in death. Furthermore, many cases of torture were characterized as lesser offences such as unlawful harassment and coercion, so that the accused could be given a conditional discharge under article 144 (2).

18. It appeared that the judges also failed to apply article 144 (5) of the Penal Code, as could be seen from annex I to the report, which revealed that 81 proceedings concerning torture had been initiated between 1992 and 1995, 73 of them imputed to Federal Police agents and eight to Federal Prison Service agents. In 46 of those cases - 57 per cent - injuries had been documented, all of them attributable to Federal Police agents. Over the same period the number of injuries documented had fallen substantially.

19. However, the final column of the table revealed the ineffectiveness of the judicial investigations, which might account for the gradual decline in the number of accusations. Of the proceedings in question, 53 (66 per cent) had been stayed or dismissed, and 23 cases had been filed. In no case had a sentence been passed - a circumstance inconsistent with the fact that injuries had been documented in 46 of the cases.

20. The explanation seemed to be that judges habitually failed to apply article 144 (5), which provided for the trial and conviction of the perpetrators' superior in the event of his culpable failure to prevent acts of torture. In none of the cases referred to, in the report or by other sources, had the judges applied that provision. Furthermore, a study of the cases revealed not only a lack of cooperation on the part of the police services, but also attempts by those services to hamper the investigations.

21. An examination of many of the cases referred to in paragraphs 69, 70, 71, 73, 74, 77, 79 and 80 of the report, and in reports by NGOs, revealed the

existence of a powerful network of systematic complicity within the police institutions, involving such practices as claims by police officers to have acted in self-defence, the placing of a weapon in the corpse's hands, falsification of autopsy findings, destruction of evidence, cleansing of corpses and their clothing to remove evidence of torture, false declarations of the cause of death by members of the medical profession, and institutional protection of the individuals accused.

22. Those practices were typified by the Sergio Santiago Durán case, in which the police surgeon had given as the cause of death poisoning by substances ingested by the victim; while a second autopsy, conducted by independent doctors, had revealed evidence of suffocation resulting from the placing of a plastic bag over the victim's head, bruising, injuries caused by electric shocks applied to the genitals, and death as a result of cardiorespiratory arrest. The Durán case also revealed extensive police protection of the direct perpetrators of the crime, several of whom had continued to live normal lives until detained following a recent television inquiry.

23. With respect to article 5, paragraph 18 of the report indicated that there had been no changes in the exercise of jurisdiction by the judiciary over the offences referred to in article 4 of the Convention since the preceding reports. Domestic legislation was in keeping with the provisions of article 5, paragraph 1, subparagraph (a). With regard to paragraph 1, subparagraph (b), national jurisdiction could be exercised only over offences committed abroad by agents or employees of the Argentine authorities in the performance of their duty. Otherwise, the crime escaped national jurisdiction, even if the criminal was a national and had returned to the national territory. With regard to paragraph 1, subparagraph (c), if the crime had been committed abroad against a victim of Argentine nationality, the case escaped national jurisdiction whether the person responsible was a national or a foreigner. With regard to paragraph 2, article 5 of Act No. 1612 on extradition, cited in the initial report, required the accused to be tried in Argentina if his extradition was refused. That Act, dating from 1885, provided that nationals would not be extradited.

24. He had no comments to make regarding articles 6 and 9. With respect to articles 7 and 8, the report stated that Argentina applied the principle aut dedere aut punire and, in cases where no agreement existed, that the principle applied to nationals, and also in respect of acts having consequences within its territory. That statement seemed to indicate that the duty to try the accused where extradition was refused and no bilateral extradition treaty existed would apply only with respect to nationals. He wondered what would happen if a foreigner's extradition was refused and no extradition treaty existed with the requesting State. There appeared to be a contradiction between article 1 of the Penal Code and article 5 of Act No. 1612. In such cases, he would like to know which provision would prevail.

25. With respect to article 11, the previous report had referred to the provisions of the new Code of Criminal Procedure, which was then about to enter into force. When the Committee had examined that report, the new Code had come into force only a few days previously. The third periodic report

provided extensive information on the main provisions of the new Code that were aimed at safeguarding the physical and mental integrity of persons deprived of liberty.

26. The change from an inquisitorial to an accusatory procedure was to be welcomed, as it was likely to reduce substantially the incidence of torture. However, no information was provided on standards and instructions relating to custody and treatment of detainees, other than the reference to provision for an enforcement judge (para. 60).

27. According to information received from NGOs, despite the severe restrictions on cases in which the police could detain persons without a court order, large numbers of persons continued to be detained without such an order in application of police edicts, or under the procedure for conducting identity checks. It was alleged that 80 per cent of police detentions were carried out in application of one or other of those two measures. According to the Amnesty International report for 1997, a new statute to be prepared by the Constituent Assembly for the Province of Buenos Aires would substantially reduce the powers of the police to detain persons on those grounds. He would welcome further information in that regard.

28. Mr. ZUPANCIC (Alternate Country Rapporteur), having endorsed his colleague's positive remarks about the third periodic report of Argentina (CAT/C/34/Add.5), referred to the information contained in the latest Amnesty International report on Argentina to the effect that, between 1993 and 1996, the Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies) had recorded over 1,200 victims of police violence in the Federal Capital and Greater Buenos Aires. While the Office of the Under-Secretary for Human Rights within the Argentine Ministry of the Interior, mentioned in paragraph 50 of the core document for Argentina (HRI/CORE/1/Add.74), appeared to be in an excellent position to ensure respect for articles 11 and 12 of the Convention, it would have been helpful if that Office had provided statistics in its field, a comment which also applied to the institutions referred to in paragraphs 54, 56, and 60 of the core document.

29. Paragraph 29 of the third periodic report, omitted any mention of education and information regarding the prohibition against torture in the training of medical personnel, as provided for in article 10 of the Convention. He would like further information concerning the procedural penalties provided for under article 2 of the Code of Criminal Procedure (para. 35 of the report) and, in particular, whether such penalties were imposed in the event of a violation of the rule that personal liberty might be restricted only to the absolutely essential extent, as provided for in article 280 of the Code of Criminal Procedure (para. 36).

30. With regard to paragraph 37 of the report, which specified the usual exceptions to the requirement for a court order for arrest or pre-trial detention, he would like to know whether there was any case law, or any provision in the Code of Criminal Procedure, which required the prosecuting party to accumulate a certain level of evidence before a court order could be issued. He had been pleased to learn from paragraphs 38 and 39 that incommunicado detention could be imposed for a maximum of 72 hours only and

that such detention was no impediment to a detainee's communication with his defence counsel. He would, however, like some assurance that communication with the defence counsel took place in private.

31. Having welcomed the fact that the habeas corpus procedure was available in Argentina, he requested enlightenment concerning the application by an individual accused of committing an offence for exemption from detention (para. 43 of the report), since that seemed to be the reverse of the normal procedure, whereby the onus lay on the prosecution to demonstrate the existence of one of the reasons for detention stipulated in article 319 of the Code of Criminal Procedure (para. 56). In that connection, he wondered on what basis the large number of detentions referred to by his colleague had been made and also how many of them took the form of incommunicado detention. In connection with paragraph 47, he wished to know whether the client-attorney relationship was assured of privacy.

32. It was his understanding of article 309 of the Code of Criminal Procedure, reproduced in paragraph 55, that detainees were conditionally released, without prejudice to continuing investigation, in cases where there was insufficient evidence to prosecute, since detention would constitute a violation of the presumption of innocence. He would like that interpretation confirmed. He also wished to know what legal duration of pre-trial detention was, in view of the fact that, apart from the 72-hour period of incommunicado detention, further periods of detention were probably involved before and after indictment. In connection with the disallowance of voluntary statements to the police (para. 58), he wished to know whether information gathered through pressure and torture by the police had any probative value in court.

33. Turning to paragraph 63 et seq of the report, he wished to know whether any allegations of torture were investigated during the habeas corpus procedure and whether there was provision for the compensation of victims, since it was his impression that torts were adjudicated as adhesive to the main criminal trial, in which case a victim might be precluded from subsequently filing a civil damages suit for torts.

34. Lastly, in connection with paragraph 92 of the report, in respect of article 15 of the Convention, he wished to know the situation with regard to the rule excluding evidence obtained by forced self-incrimination.

35. Mr. SORENSON, having endorsed the questions already asked, said, with reference to paragraphs 12, 13 and 14 of the report, that he would like to know how Argentina dealt in practice with asylum-seekers and where they were held, as it was not possible to keep them in police stations for long periods of time. He also wished to know whether Argentina's impressive training of its police officers specifically included the prohibition against torture, as provided for under article 10 of the Convention. Stressing that the education of forensic, police, prison and normal civilian doctors concerning the prohibition of torture was extremely important in view of the regrettable role that they had played in the past, he asked for further information on the education they received on that subject.

36. With regard to article 317 of the Code of Criminal Procedure, reproduced in paragraph 56 of the report, he said he wondered whether the Spanish word

translated as "may", in the first line of the article, should not have been translated as "should". He also wished to know whether it was the prison governor or the court that was responsible for releasing a prisoner under article 317, paragraph 2, of the Code and, if the responsibility rested with the latter, whether such release was ordered expeditiously.

37. With reference to paragraphs 86-92 of the report and in view of the apparently substantial need for medical compensation in Argentina, he would like to know whether the Government recognized the value of rehabilitation centres.

38. He appreciated the fact that Argentina had contributed to the United Nations Voluntary Fund for Victims of Torture. However, since contributions from the Fund to organizations working on behalf of torture victims in Argentina exceeded the total amount of donations received, he suggested that the Argentine authorities might consider increasing their contribution, as a mark of respect for the victims of torture.

39. Mr. PIKIS asked whether he understood correctly from paragraphs 41 and 42 of the core document (HRI/CORE/1/Add.74) that international treaties must be self-executing in the sense that they must establish detailed rules if they were to be invoked in the resolution of disputes before the courts.

40. He also asked whether the post of Under-Secretary for Human and Social Rights was a political or civil-service one, how long the incumbent's term of office was, who appointed him, what his terms of service were and how his jurisdiction was differentiated from that of the Ombudsman (Defensor del Pueblo), mentioned in paragraph 60 of the core document.

41. Referring to paragraph 50 of the core document, he asked what benefits were envisaged by way of damages under the historical reparation programme.

42. Paragraph 63 of the core document said that complaints could be filed by persons immediately affected or by a third party. He wondered whether there had to be some connection between the third party and the victim of violence or whether such an initiative constituted a form of actio popularis.

43. Paragraph 73 of the core document referred to restrictions on habeas corpus following the declaration of a state of siege. He hoped that the Argentine authorities had considered the possibility that the suspension of fundamental human rights under those circumstances might constitute a breach of article 2, paragraph 2, of the Convention.

44. He sought clarification concerning the implications of the pardon granted in 1989 to the perpetrators of heinous crimes - crimes against humanity in every sense of the term - during the period from 1976 to 1983. According to Amnesty International, the pardon ruled out prosecution for acts of torture, with some minor exceptions. He wished to know whether it had been tested in the courts and whether there had been a judicial pronouncement to the effect that the pardon made it legally impossible to punish those guilty of torture. If that were so, Argentina would appear to be in breach of article 12.

45. Mr. BURNS, having commended Argentina on enacting the legislation and establishing the institutions needed for the protection of human rights and adopting all the optional features of the Convention, said that the fact that prosecutions for breaches of human rights were taking place on a regular basis represented an improvement in Argentina's record since the consideration of its initial report. However, there were still reported cases of factual as opposed to legal impunity. Alleged police perpetrators of brutality were still at large, reflecting, as he saw it, the survival of a strong police culture of violence.

46. He thus reiterated the Committee's recommendation that strenuous police re-education programmes should be implemented by the Government, particularly in the case of senior police personnel. Strong statements must be made to line officers and field officers about the inevitability of investigation and punishment in the event of abuses. Change was a slow process but any country suffering from that type of problem must persevere with action to eradicate it, if necessary with the assistance of the Office of the High Commissioner for Human Rights.

47. Amnesty International asserted in its 1996 report that Elba Tempera, a lawyer for the family of Andrés Núñez, a builder who had disappeared in 1990, had been intimidated and threatened by the judge in charge of the case, who had subsequently disqualified himself. The possibility that members of the magistracy were involved in intimidation was an extremely serious matter. He asked whether the allegation had been investigated and, if so, what the outcome had been.

48. Mr. REGMI, having commended the Government of Argentina on compensating persons who had been victims of torture during the military dictatorship and their relatives, said he was interested in the legal and practical framework for the functioning of such human rights institutions as the parliamentary commissions, the Ombudsman, the Office of the Under-Secretary for Social and Human Rights in the Ministry of the Interior, the Office of the Under-Secretary for Human Rights in the Ministry of Foreign Affairs and the Federal Council of Human Rights. In particular, he would like to know which of them was the competent authority for receiving complaints of ill-treatment and torture.

49. According to an Amnesty International report that had just been published, no effective action appeared to have been taken by the Argentine authorities to eradicate the practice of torture and ill-treatment. Reports of abuses by the police in the provinces and the federal capital continued, particularly of detainees held at police stations, often under provincial police-by-laws. Progress in investigating such reports was allegedly slow.

50. Amnesty International alleged that Leandro Oliva had been arrested with his girlfriend by a police patrol in Buenos Aires and subjected to torture on the way to the police station. Both had allegedly been beaten and threatened with death while in police custody. Clarisa Andrea Lencina had filed a complaint in March 1996 against two police officers of the third police station, stating that she had been subjected to beatings, near-asphyxiation and sexual abuse on two occasions. Adriana Cortés, a transsexual woman arrested in Mendoza province in February 1997, had reportedly been refused a

painkiller for toothache until she agreed to have sexual intercourse with the guard at the police station. He wished to know whether those three cases had been investigated and, if so, what steps had been taken to remedy the abuses reported.

51. Mr. YAKOVLEV, having commended Argentina on the practical steps it had taken to implement the Convention, said that provincial legislation was a problem for any federal State. He thus asked what the relationship was between federal and provincial legislation, particularly in the case of provincial legislation which allowed for the detention of alleged suspects under police-by-laws (Code of Misdemeanours). Young people and sexual minority groups were allegedly specially targeted. Was there any machinery to monitor provincial legislation with a view to ensuring that it was compatible with constitutional and federal legislation?

52. The CHAIRMAN invited the delegation to reply at the next meeting to the questions asked by the members of the Committee.

53. The delegation of Argentina withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

54. Mr. SORENSEN said that Mr. Niels Steenstrup Zeeberg, a former project coordinator at the International Rehabilitation Council for Torture Survivors in Copenhagen, had embarked on a three-year world tour with his family and a photographer - the Stop Torture Omnibus Programme (STOP) - to generate publicity for the global campaign against torture. Having interviewed representatives of Amnesty International in the United Kingdom and members of the European Committee for the Prevention of Torture at Strasbourg, he had requested permission to film, and possibly interview, members of the Committee against Torture on the following day, when the delegation of Portugal was due to present its report. STOP would subsequently visit rehabilitation centres throughout the world. It was a project that he wholeheartedly supported.

55. The CHAIRMAN said that he, personally, felt that the publicity for the Committee and the fight against torture was to be welcomed and that Mr. Zeeberg should be given permission to film.

56. Mr. GONZÁLEZ POBLETE said he had no objection to granting Mr. Zeeberg's request, since the proposed film was a general documentary. It would have been a different matter if the film had concerned a specific State party.

57. The CHAIRMAN said that the delegation of Portugal would be consulted before permission was given.

58. Mr. PIKIS suggested that only the Chairman should be interviewed in an official capacity. Other members of the Committee would be free to give private interviews if they so desired.

59. It was so decided.

The meeting rose at 12.55 p.m.